

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 15TH DECEMBER 2006 / 24TH AGRAHAYANA 1928

WP(C).No. 32262 of 2006(N)

AGAINST THE ORDER IN EP.358/2004 IN
OS 93/04 of MUNSIFF COURT, CHITTUR

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PETITIONER:

1. NOORJAHAN BEEVI, AGED 79 YEARS,
W/O.LATE BABJAN SAHIB, RESIDING AT KARUVAPARA IN
KOZHINHAMPARA VILLAGE, CHITTOOR TALUK,
PALAKKAD.

2. SIRIBHANU, AGED 48 YEARS,
W/O.LATE AZAD,
-DO-.

BY ADV. SMT.PRABHA R.MENON
SRI.M.KRISHNAKUMAR

RESPONDENTS:

MOHAMMED YOUSEFF RAWTHER,
AGED 65 YEARS, S/O.MOHAMMED RAWTHER,
RICE MILL OWNER, KARUVAPARA IN
KOZHINHAMPARA VILLAGE, CHITTOOR TALUK,
PALAKKAD.

BY ADV. SRI.SALLY THOMAS CHACKO

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 15/12/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO. 32262 OF 2006

Dated 15th December 2006

JUDGMENT

Petitioners are judgment debtors. Respondent is the decree holder/auction purchaser. Towards realisation of Rs.65,750/- due under the decree, respondent filed E.P.358/04. Respondent sought sale of attached properties for realisation of the decree debt. Property of petitioners were directed to be sold. Respondent as decree holder auction purchaser purchased property. Sale was confirmed. This petition is filed under Article 227 of Constitution of India by judgment debtors to set aside sale contending that they are prepared to pay the entire decree debt including cost and expenses incurred by decree holder and property was sold for a far less value and therefore sale is to be set aside. Respondent appeared and filed counter affidavit contending that suit was decreed for Rs.63,500/- and petitioners have sufficient properties and upset price was fixed as per order in E.A.141/06 at Rs.80,000/- at the instance of

respondent which was not opposed by judgment debtors and it is thereafter the property was purchased in auction by respondent for Rs.80,100/- and value of property was assessed by licensed valuer, evidenced by Ext.R1(b) certificate is only Rs.65,313/- and in such circumstance sale cannot be set aside.

2. Learned counsel appearing for petitioners and respondent were heard.

3. Arguments of learned counsel appearing for respondent is that as per Ext.R1(b) certificate property has been valued by approved valuer on the basis of the value fixed by Tahsildar and it will come only to Rs.65,313/- and property was produced by respondent for Rs.80,100/- and in such circumstance value received by auction sale is much more than the actual value and sale cannot be set aside.

4. On hearing learned counsel appearing for petitioners and respondent, it is clear that respondent decree holder sought to realise the decree debt by sale of the property of judgment debtors. The property was purchased by the decree holder auction purchaser for Rs.80,100/-. Judgment debtors had contended before the executing court that the value of the property is more than Rs.Five Lakhs. As against

the provisions of second proviso to sub Rule 2 of Rule 66 of Order XXI of Code of Civil Procedure, the value shown by the judgment debtors was not shown in the sale proclamation. Though Rule 64 of Order XXI, casts an obligation on the executing court to get satisfied that by sale of a part of the attached property the decree debt cannot be realised, executing court did not consider that aspect before directing sale. As against the case of the petitioners that the value of the property would not more than five lakhs rupees, case of respondent sought to be supported by the certificate of valuation is that the value will be less than Rs.Sixty six thousand. Petitioners would contend that they are prepared to pay to the decree holder the entire purchase money, the interest on that amount, the cost in the execution proceedings and the sale may be set aside. If the value of the property is only Rs.65,313/- as contended by the respondent or only Rs.80,100/- by setting the sale after paying more than that mount respondent will not be prejudiced. Respondent decree holder is definitely entitled to get the amount spent by him apart from the value deposited by him as sale purchase money inclusive of expenses for the purchase of stamp papers. Respondent

has not raised any other right or claim over the property except the right as auction purchaser.

5. When the entire facts and circumstance is taken into consideration, interest of justice warrants interference in the sale effected by the executing court, by compensating the decree holder auction purchaser. Respondent is entitled to Rs.80,100/- the auction money he deposited in court, Rs.4,800/- he spent for purchase of stamp papers for the sale certificate, the interest on Rs.80,100/- from the date of deposit till this day and a reasonable profit he could have legitimately expected in the sale. By a reasonable estimate the amount would come not more than Rupees One lakh and Five thousand only. Petitioners are directed to deposit Rs.1,05,000/- within three weeks from this day before the executing court for payment to the decree holder auction purchaser. If the amount of Rs.1,05,000/- is so deposited before the executing court, executing court shall set aside the sale and direct decree holder/respondent should re-convey the property in favour of petitioners.

Writ petition is disposed of.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.